

<p><b>BOARD OF ASSESSMENT APPEALS, STATE OF COLORADO</b> 1313 Sherman Street, Room 315 Denver, Colorado 80203</p> <hr/> <p>Petitioner:</p> <p><b>GJ SCORES, LLC,</b></p> <p>v.</p> <p>Respondent:</p> <p><b>PROPERTY TAX ADMINISTRATOR</b></p>	<p><b>Docket No.: 50273</b></p>
<p><b>ORDER</b></p>	

**THIS MATTER** was heard by the Board of Assessment Appeals on February 24, 2009 Diane M. DeVries and Sondra W. Mercier presiding. Petitioner was represented by Eldon E. Silverman, Esq. Respondent was represented by Robert H. Dodd, Esq. Petitioner is requesting an abatement/refund of taxes on the subject property for tax year 2006.

**PROPERTY DESCRIPTION:**

Subject property is described as follows:

**Personal Property located at 2445 F 3/8 Road, Grand Junction, Colorado  
(Mesa County Schedule No. 03122-50)  
(DPT File Numbers 39-08-002 and 39-08-003)**

The subject property consists of personal property used in the operation of a bowling center. The center includes a 36-lane bowling alley, billiards area, arcade games, and restaurant.

Petitioner filed an abatement/refund petition for tax year 2006, due to an overvaluation of its equipment with the Mesa County Board of Commissioners, who granted the petition. The petition was forwarded to Respondent. Respondent denied the petition on the grounds that the Mesa County Assessor’s best information available (BIA) valuation was “based on research of a variety of data sources and the personal property of comparable businesses,” and was not “arbitrary or capricious.” On July 16, 2008, Petitioner filed an appeal of Respondent’s denial with the Board. On February 5 2009, Respondent filed a Motion to Dismiss the petition.

Respondent's witness, Mr. Steve Henderson, Personal Property Appraiser with the Mesa County Assessor's office testified that a personal property declaration was sent in January 2006. Mr. Henderson indicated that if the declaration was not returned, that it was assumed to have been received by Petitioner. The Assessor's file notes indicate repeated requests by phone in 2006, and an on-site audit on June 1, 2006, were made in an attempt to obtain reliable data. At the time of the June audit, Respondent's witness was able to inventory personal property in all but the security areas. Mr. Henderson reported that he attempted to get actual cost information for the VIA brand bowling alley equipment from the local representative, Ron Hodgen, who was also the manager and part owner of the subject in 2006. Mr. Henderson reported that he received no response from Mr. Hodgen.

Mr. Henderson relied on a state-approved cost estimating service, *Marshall Valuation Service*, to derive a market-adjusted cost value for the subject property. Mr. Henderson also relied on information from other businesses in the area as well as web site information to confirm the appropriate value for the subject. While Mr. Henderson regarded the equipment as above average, he lowered the value to reflect a first use exemption since it was unknown as to whether all of the property was in operation between January 1, 2006 and the date of the audit. Under CRS section 39-3-118.5:

For property tax years commencing on and after January 1, 1996, business personal property shall be exempt from the levy and collection of property tax until such business personal property is first used in the business after acquisition.

Petitioner contends that the BIA valuation was excessive and arbitrary and should be reduced. Petitioner's witness, Mr. William Steele of GJ Scores, LLC testified that Ron Hodgen and Lorna DeVinney were responsible for operation of GJ Scores during the 2006 tax year. Both Hodgen and DeVinney have since been dismissed from their positions and did not testify. Mr. Steele did not deny that Petitioner had failed to submit a declaration for tax year 2006, nor was a protest filed prior to his filing of the abatement petition.

Petitioner's witness Mr. Steven R. Carver, CPA, indicated that he was unable to find a copy of the 2006 Notice of Valuation in the files. Petitioner contends that the absence of a copy of the notice in the Mesa County files indicates that it is possible that it was not sent. Mr. Henderson testified that Notices of Valuation are computer generated and that hard copies are not kept on file. Mr. Henderson provided a computer copy of the Notice of Valuation bearing a date of June 15, 2006.

According to *Property Tax Administrator v. Production Geophysical Services Inc.*, 860 P.2d 514, 519 (Colo. 1993):

When the taxpayer fails to return the information required by the personal property schedule, the assessor still must determine the value of the taxpayer's property . . . using the best information available to him or her. If the taxpayer believes that the valuation has been made in error, it must then file a protest in accordance with the statutory procedures set forth in section 39-5-122(2). If the taxpayer neglects to avail

itself of the procedure, the assessor's BIA valuation is presumed to be accurate and becomes the final valuation.

The Board is convinced that adequate data was provided to support that the Notice of Valuation for 2006 had been sent, with no conclusive evidence provided by Petitioner to the contrary.

“A BIA valuation is not an arbitrary valuation, an excessive valuation, or a penalty imposed upon the taxpayer.” *5 Assessor's Reference Library: Personal Property Manual* 3.29 (2006). The Board is convinced that the value assigned by the Mesa County Assessor had a reasonable basis and was not arbitrarily or capriciously applied by the Mesa County Assessor. The Board finds Mr. Henderson's procedure to be thorough and that the Assessor's office had made numerous attempts to compel Petitioner to provide a declaration or other documentation supporting the value of the subject property. Petitioner admits it did not file a declaration schedule and did not follow the protest procedure set forth in CRS section 39-5-122(2). Therefore, Petitioner may not seek an abatement/refund of the BIA assessment.

The Board upholds Respondent's decision. Respondent's Motion to Dismiss is granted.

### **ORDER:**

The petition is dismissed.

### **APPEAL:**

If the decision of the Board is against Petitioner, Petitioner may petition the Court of Appeals for judicial review according to the Colorado appellate rules and the provisions of CRS § 24-4-106(11) (commenced by the filing of a notice of appeal with the Court of Appeals within forty-five days after the date of the service of the final order entered).

If the decision of the Board is against Respondent, Respondent, upon the recommendation of the Board that it either is a matter of statewide concern or has resulted in a significant decrease in the total valuation for assessment of the county wherein the property is located, may petition the Court of Appeals for judicial review according to the Colorado appellate rules and the provision of CRS § 24-4-106(11) (commenced by the filing of a notice of appeal with the Court of Appeals within forty-five days after the date of the service of the final order entered).

In addition, if the decision of the Board is against Respondent, Respondent may petition the Court of Appeals for judicial review of alleged procedural errors or errors of law when Respondent alleges procedural errors or errors of law by the Board.

If the Board does not recommend its decision to be a matter of statewide concern or to have resulted in a significant decrease in the total valuation for assessment of the county in which the property is located, Respondent may petition the Court of Appeals for judicial review of such questions.

CRS § 39-10-114.5(2) (2008).

**DATED and MAILED** this 10<sup>th</sup> day of April 2009.

**BOARD OF ASSESSMENT APPEALS**

*Diane M DeVries*  
Diane M. DeVries

*Sondra W Mercier*  
Sondra W. Mercier

This decision was put on the record

APR 10 2009

I hereby certify that this is a true and correct copy of the decision of the Board of Assessment Appeals.

*HA Flannery*  
Heather Flannery

